

AMENDED IN ASSEMBLY APRIL 30, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 905**

---

---

**Introduced by Assembly Member Ting**

February 22, 2013

---

---

An act to add Section 1471.5 to the Civil Code, relating to real property.

### LEGISLATIVE COUNSEL'S DIGEST

AB 905, as amended, Ting. Real property: environmental fee covenants.

Existing law provides for the recording of an instrument containing an Environmental Restriction covenant made by an owner of land or by the grantee of land to do or refrain from doing an act that is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials.

This bill would also provide for the recording of an Environmental Fee Covenant, as specified, that is, among other things, imposed *for no more than 50 years* in connection with the installation on the property of equipment or improvements that are intended to promote, among other things, energy efficiency and the reduction of the consumption of water or other natural resources. *The bill would require the instrument containing the covenant to include specified information including a legal description of the property subject to the covenant, the dates for commencement and expiration of the covenant, and a specified notice relating to the terms and conditions of the covenant. The bill would*

*require the covenant to be subject to and subordinate to the lien and encumbrance of any first mortgage or any other mortgage against the property subject to certain requirements. The bill would require the covenantee, within a specified period following receipt of written notice from the covenantor, to provide the covenantor with written confirmation of specified matters relating to information about any outstanding obligation under the terms of the covenant. The bill would make findings and declarations in this regard.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. The Legislature finds and declares all of the*  
2     *following:*
- 3     *(a) A significant percentage of California's existing commercial*  
4     *building stock was built before the 1978 building standards. The*  
5     *installation of energy and water efficiency upgrades that are*  
6     *consistent with the latest building standards would benefit the*  
7     *owners and tenants of these buildings through increased property*  
8     *values and reduced operating costs, while also improving the level*  
9     *of comfort for tenants.*
- 10    *(b) Upgrading the existing commercial building stock with the*  
11    *installation of energy and water efficiency improvements would*  
12    *also benefit the environment through the reduction of energy*  
13    *consumption, water consumption, and greenhouse gas emissions.*
- 14    *(c) Although publicly funded programs exist to defray the cost*  
15    *of installing energy and water efficiency upgrades, commercial*  
16    *sector installation of these upgrades is constrained by the lack of*  
17    *access to affordable private financing opportunities for many*  
18    *commercial building owners.*
- 19    *(d) It is the intent of the Legislature to advance the achievement*  
20    *of the state's environmental and economic goals by facilitating*  
21    *private funding opportunities for commercial building owners to*  
22    *install energy efficiency, water conservation, and clean energy*  
23    *improvements on their properties through the use of voluntary real*  
24    *property covenants with transfer fees that run with the land. This*  
25    *funding mechanism will provide the opportunity to distribute the*  
26    *costs of the improvements to a commercial building over a period*  
27    *of years and across subsequent owners.*

1     ~~SECTION 1.~~

2     SEC. 2. Section 1471.5 is added to the Civil Code, to read:

3     1471.5. (a) Notwithstanding Section 1468 or any other law, a  
4     covenant made by an owner of land or by the grantee of land to  
5     do or refrain from doing some act on his or her own land, which  
6     doing or refraining is expressed to be for the benefit of the  
7     covenantee, regardless of whether or not it is for the benefit of  
8     land owned by the covenantee, shall run with the land owned by  
9     or granted to the covenantor if all the following requirements are  
10    met:

11    (1) The land of the covenantor that is to be affected by the  
12    covenant is particularly described in the instrument containing the  
13    covenant.

14    (2) The successive owners of the land are expressed to be bound  
15    thereby for the benefit of the covenantee in the instrument  
16    containing the covenant.

17    (3) The covenant is an Environmental Fee Covenant pursuant  
18    to subdivision~~(e)~~ (d).

19    (4) The instrument containing the covenant is recorded in the  
20    office of the recorder of each county in which the land or some  
21    portion thereof is situated.

22    (b) Except as provided by Section 1466 *and subject to*  
23    *paragraph (3) of subdivision (d)* or as specifically provided in the  
24    instrument creating a covenant made pursuant to this section, the  
25    covenant shall be binding upon each successive owner, during his  
26    or her ownership, of any portion of the land affected thereby and  
27    upon each person having any interest therein derived through any  
28    owner thereof.

29    (c) If several persons are subject to the burden of a covenant  
30    recorded pursuant to this section, it shall be apportioned among  
31    them pursuant to Section 1467, except if only a portion of the land  
32    is so affected thereby, the apportionment shall be only among the  
33    several owners of that portion.

34    ~~(d) This section shall apply to the mortgagee, trustee, or~~  
35    ~~beneficiary of a mortgage or deed of trust upon the land or any~~  
36    ~~part thereof while, but only while, he or she, in that capacity, is in~~  
37    ~~possession thereof.~~

38    ~~(e)~~

39    (d) For purposes of this section, “Environmental Fee Covenant”  
40    is a covenant that meets all of the following requirements:

(1) The covenant imposes a transfer fee meeting the requirements set forth in Section 1098. The amount of the transfer fee imposed through the covenant, combined with the amount of the fee imposed through any prior Environmental Fee Covenant imposed on the same property, shall not exceed 2 percent of the full cash value, as defined in Section 110 of the Revenue and Taxation Code, of the property upon transfer. *For purposes of this section, a “transfer” shall mean the conveyance of either an entire or partial undivided fee ownership interest in the subject property, and shall exclude any transfer which is excluded by Section 62 of the Revenue and Taxation Code from classification as a “change in ownership”.*

(2) The covenant encumbers property that, at the time the covenant is ~~entered~~ recorded, either does not contain residential units or contains five or more residential units, *provided that, with respect to property that contains five or more residential units, the covenant is not prohibited under any rules or regulations adopted by the Federal Housing Finance Agency.*

(3) *The covenant shall not exceed 50 years in duration.*

~~(3)~~

(4) The covenant is imposed in connection with the installation or construction on the property of *the covenantor of* equipment or improvements that are intended to promote any of the following:

(A) Energy efficiency.

(B) The reduction of the generation of greenhouse gasses.

(C) The reduction of the consumption of water or other natural resources.

(D) Compliance with Part 6 and Part 11 of Title 24 of the California Code of Regulations.

(E) The generation of renewable energy using one or more means identified in paragraph (1) of subdivision (a) of Section 25741 of the Public Resources Code.

~~(4)~~

(5) The covenant includes in its title the words: “Environmental Fee Covenant.”

~~(5)~~

(6) The covenant recites that it meets the requirements of this subdivision. It shall be ~~rebuttably~~ presumed, *which presumption shall be rebuttable*, that the covenant meets the requirements of this subdivision. The presumption may be overcome if it is

1 established by a preponderance of the evidence that the covenant  
2 fails to meet the requirements of this subdivision.

3 (e) *The instrument containing the covenant shall:*

4 (1) *Specify the name of the covenantor and covenantee.*

5 (2) *Specify the address for the covenantor and covenantee.*

6 (3) *Contain the legal description of the property subject to the*  
7 *covenant.*

8 (4) *Describe the dates for commencement and expiration of the*  
9 *covenant.*

10 (5) *Contain an actual dollar-cost example of the fee for property*  
11 *priced at one million dollars (\$1,000,000) or more.*

12 (6) *Specify the subordination of the covenant pursuant to*  
13 *subdivision (f).*

14 (7) *Specify the terms and buy-out amount for earlier satisfaction*  
15 *of the covenant.*

16 (8) *Include the following language in at least 14-point boldface*  
17 *type:*

18 **“BY ENTERING INTO THIS INSTRUMENT, COVENANTOR**  
19 **ACKNOWLEDGES AND AGREES THAT (1) THE COVENANT**  
20 **CREATED PURSUANT TO THIS INSTRUMENT WILL REMAIN**  
21 **AN OBLIGATION AGAINST THE PROPERTY UNTIL**  
22 **EXPIRATION OF THE STATED TERM UNLESS THIS**  
23 **COVENANT IS EARLIER TERMINATED IN STRICT**  
24 **ACCORDANCE WITH THE TERMS DESCRIBED IN THIS**  
25 **INSTRUMENT, (2) COVENANTOR’S OBLIGATIONS WITH**  
26 **RESPECT TO THE COVENANT MAY BE SATISFIED ONLY**  
27 **FROM PAYMENT OF THE TRANSFER FEE IN ACCORDANCE**  
28 **WITH THE TERMS DESCRIBED HEREIN, AND (3) THAT THE**  
29 **OBLIGATION TO PAY A TRANSFER FEE IN ACCORDANCE**  
30 **WITH THE TERMS OF THIS INSTRUMENT SHALL REMAIN**  
31 **IN EFFECT AND SHALL CONTINUE TO APPLY TO ANY**  
32 **FUTURE TRANSFER OF THE PROPERTY IRRESPECTIVE OF**  
33 **THE AMOUNT OF THE TRANSFER FEE PAID IN**  
34 **CONNECTION WITH ANY PARTICULAR TRANSFER.”**

35 (f) (1) *The covenant shall be subject to and subordinate to the*  
36 *lien and encumbrance of any first mortgage or any other mortgage*  
37 *against the property that secures the payment of any present or*  
38 *future financing used to either purchase the property or finance*  
39 *the construction of improvements to the property or any financing*  
40 *that replaces that acquisition or construction financing, provided*

1 *that any such financing is bona fide and at arm's length, and*  
2 *further provided that after any action to enforce a mortgage,*  
3 *including, without limitation, any foreclosure or a transfer in lieu*  
4 *of foreclosure, the property shall remain subject to the covenant*  
5 *and the covenant shall continue to be valid, binding, and*  
6 *enforceable in accordance with its terms.*

7 *(2) For purposes of this section, a "mortgage" shall mean any*  
8 *mortgage or deed of trust recorded against the property in the*  
9 *official records of the county in which the property is located.*

10 *(3) A "first mortgage" shall mean any mortgage that has lien*  
11 *priority over all other mortgages.*

12 *(4) In no event shall a transfer fee be payable upon a foreclosure*  
13 *sale or a transfer in lieu of foreclosure.*

14 *(g) In those situations where the covenantor desires and*  
15 *requests, in writing, confirmation of information about any*  
16 *outstanding obligation under the terms of the covenant, including,*  
17 *but not limited to, the remaining term of the covenant and the cost*  
18 *to extinguish the covenant, the covenantee named in the instrument*  
19 *containing the covenant shall, within 14 days following receipt of*  
20 *written notice from the covenantor, provide the covenantor with*  
21 *written confirmation of the matters described in paragraphs (1),*  
22 *(2), (4), (6), and (7) of subdivision (e).*